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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,368	03/26/2004	Keith P. Thompson	82001-1080	3024

24504 7590 10/17/2007  
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP  
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ATLANTA, GA 30339

EXAMINER
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MAI, HUY KIM

ART UNIT	PAPER NUMBER
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2873

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/811,368

Applicant(s)

THOMPSON ET AL.

Examiner

Huy K. Mai

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-135 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-135 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***DETAILED ACTION***

***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-83 in the reply filed on Jul. 25, 2007 is acknowledged.

Along with election, the applicant (in remarks, page 2) indicates that "Group I claims are in proper condition for allowance".

Since the application and/or the elected claims have not been examined yet, no indication for allowability can be accepted. In further review the disclosure and claims, a clarification and/or drawings are needed as discussed in remarks bellow and the restriction is modified as follows:

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6 and 13-83, drawn to a system and a method for correlating parameters of a visual system with a coefficient of an equation represent for interactively obtained neuro-ocular wavefront data.
  - II. Claims 7-12, drawn to a system that receives, stores and/or retrieves neuro-ocular wavefront data and calculates a correction for a visual system from the wavefront data.
  - III. Claims 84-101, drawn to a system and a method for predicting a result of applying the determined correction and calculating a future correction of a visual system.

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IV. Claims 102-127, drawn to a system and method for statistically analyzing the multiple sets of neuro-ocular wavefront data.

V. Claims 128-135, drawn to a system and method for ascertaining characteristics of a visual system.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-V are directed to related inventions. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed are different modes of operation, different functions and different effects. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, and restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### **REMARKS**

The terminology "neuro-ocular wavefront data" is defined in the disclosure that "In order to address these deficiencies, a technique known as visual aberrometry has been developed, in which the patient's preferred retinal plane is localized and the effects of the neurological pathways are taken into account by combining subject feedback with the physio-optical characteristics of the eye. The aggregate effect of the neurological pathway in combination with the characteristics of the eye is referred to herein as "neuro-ocular wavefront error" or "neuro-ocular wavefront data." Examples of visual aberrometers are described in greater detail in U.S. Patent Numbers 5,258,791, 6,000,800, and 6,099,125, which are incorporated herein by reference in their entireties" (pages 2-3, P[008]) and "The aggregate effect of the location of the patient's preferred retinal plane and the effects of the neurological pathways, is known as a "neuro-ocular wavefront error" or "neuro-ocular wavefront data"" (page 7, P[0045]). It appears that the terminology "neuro-ocular wavefront data" is known as the applicant refers to the U.S. Patent Numbers 5,258,791, 6,000,800, and 6,099,125. Further, the applicant (Figs. 2-5) discloses a pupillometry image (a sampling matrix) in the refractometer **adapted to acquire** (emphasized added) neuro-ocular wavefront data. It is unclear whether the applicant's embodiments actually obtain or just adapted to acquire neuro-ocular wavefront data. The applicant's disclosure and the drawings do not disclose the effects of the neurological pathways being taken into account and how the applicant's embodiments interactively obtain the neuro-ocular wavefront data. It is unclear whether the neuro-ocular wavefront in the instant application can be differentiated from the prior art neuro-ocular wavefront data as the applicant referred to the above mentioned U.S. Patent Numbers?

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The dependency 16 of claim 28 is typo because claim 28 is a method claim while claim 16 is an apparatus claim.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy K. Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

HKM/  
October 14, 2007

  
Huy Mai  
Primary Examiner